GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – West Godavari District - Revision Petition filed by Sri Kuchipudi Dorabbai, S/o Gangaraju, R/o. Surapuvarigudem(V), Buttaigudem (M), West Godavari District against the orders of Agent to Government, West Godavari District, dt:04-09-2010 in SRA. No.40/2003 with regard to Ac. 8.18 cents covered by R.S. No.267/2 of Surapuvarigudem(V), Buttaigudem (M), West Godavari District – Status quo – orders – issued.

SOCIAL WELFARE (TW.LTR-1) DEPARTMENT

G.O.MS.No. 76 **Dated: 21-08-2017**
Read the following:-

1. Revision Petition filed by Sri Kuchipudi Dorabbai, S/o Gangaraju, R/o. Surapuvarigudem(V), Buttaigudem (M), West Godavari District, dated:02.10.2010.
2. Govt. Memo.No.9066/LTR-1/2010, dt.15.11.2010.
3. From the Agent to Government/ District Collector, West Godavari, Eluru Roc.No.1091/2011/F2, dated.09.02.2011.
4. Govt. Memo.No.201671/LTR-1/2016, dated.20.12.2016.

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ORDER:-

In the reference 1st read above, Sri Kuchipudi Dorabbai, S/o Gangaraju, R/o. Surapuvarigudem(V), Buttaigudem (M), West Godavari District has filed Revision Petition before the Government against the orders of the Agent to Government, Eluru, West Godavari District. dt.04-09-2010 in SRA. No.40/2003 in relates to the land in survey No.267/2 measuring an extent of Acres 8.18 cents in Surapuvarigudem(V) of Buttaigudem (M), West Godavari District.

Brief facts of the case:-

2. The respondents 2,3 & 4 in the Revision Petition i.e., Special Deputy Tahsildar (TW), Kota Ramachandrapuram, West Godavari District, Dadi Srinu, R/o. Surapuvarigudem and Tama Seetayya, R/o Chenchugudem (V) of Buttaigudem have filed a complaint in SR No. 64/2002 before The Special Deputy Collector (T.W.), Kota Ramachandrapuram alleging that the revisioner petitioner here in acquired land of Ac. 0.96 cents and Ac. 8.18 cents respectively covered by RS Nos. 264/1 and 267/2 of Surapavarigudem Village in contravention of the provisions of A.P. Scheduled Areas Land Transfer Regulation 1 of 1959 as amended by Regulation 1 of 1970. The said compliant was dismissed by an Order dt. 27.07.2004 in SR No. 24/2002. The 3rd respondent i.e. Dadi Srinu, R/o Surapuvarigudem has appealed before the Agent to the Government (1st respondent herein) and the appeal was allowed. Aggrieved by the decision of the 1st respondent herein, the revision petition was filed by Sri. Kuchipudi Dorababai S/o Ganga Raju, R/o Surapuvarigudem(V), Buttaigudem (M), West Godavari District before the Government against the Orders of the Agent to Government, Eluru, West Godavari District. in SRA No. 1/2009 (F2). Dated. 29/9/2010 in respect of land measuring Ac. 8.18 cents covered by R.S. No.267/2 of Surapuvarigudem (V), Buttaigudem (M), West Godavari District.

GROUNDS OF REVISION AS SUBMITTED BY THE REVISION PETITIONER:

- The revision petitioner submits that the order of 1st respondent is contrary to law, weight of evidence and probabilities of the case.

- The revision petitioner submits that the Special Deputy Collector, Kota Ramachandrapuram after detailed enquiry dismissed the complaint of the

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respondent 2 to 4 while allowing the petitioner to retain the title and possession of the above subject lands, but the Agent to Government did not take real facts of the case, contentions of both the parties, material evidence in support thereof and relevant provisions of law by which the subject matter is governed in to consideration. As such the 1st respondent incorrectly exercised appellate jurisdiction in ignorance of settled principles of law while dispensing quasi-judicial functions.

- The revision petitioner submits that the 1st respondent did not consider the exhibits R1 to R5, and more so the EX. R6 which is sale deed under which the petitioner purchased the subject land from Doddi Ramanna.

- The proof of possession and enjoyment of the property by Kuchipudi Dorababai, ever since the date of agreement of sale is evidenced by adangal experts, which are marked as EXs. R12 and R13. The Director of Settlements also granted patta in favour of the petitioner as per orders dt. 31/01/1997 passed in A.P. No.22 of 1995. The said Order copy is marked as Ex.R.13(b). The Director of Settlements while upholding the title of the present Petitioner, granted patta under Regulation 2/70.

- The revision petitioner submits that, in respect of schedule property, earlier and enquiry was conducted under regulation 1959 in SR No. 128/85 and the title of revision petitioner was upheld as per the orders dt. 16/01/1991. The said order copy is marked as Ex.R.17. The present order is vitiated by doctrine of res-judicata, since an issue finally decided cannot be re-opened nor re-determined contrary thereto.

- The revision petitioner submits that the Agent to Government (1st respondent herein) failed to consider the fact that the respondents 3 and 4 appeared before Special Deputy Collector (TW) and clearly stated that they had nothing to do with the land under dispute. Further appeal before the 1st respondent was filed in the year 2009, whereas should be filed within 60 days from the date of order. The appeal was presented much long after the expiry of limitation without filling of any application to condone the delay. The 1st respondent ought to have rejected appeal on that ground. In this context, the revision petitioner further submits that, the 3rd respondent has neither locus-standi to prefer an appeal, because the 3rd respondent is neither related nor successor in interest or any of the predecessors in title of the petitioner.

- The revision petitioner submits that, the allegations that the 3rd respondent was belonged to Nayak caste and such caste was a schedule tribe is not correct. By 1957, they were telagalu by caste, which was forward caste. Even otherwise “Nayak” community was not notified as scheduled tribe community. Subsequent to 1960 only Nayaks were notified as schedule tribe community. Dadi families are not Nayaks by caste, they are Telagalu, which has always been forward caste, so, the sale deeds executed by Dadi family in the year 1957 are absolutely valid and there is no violation of any Land transfer Regulations. The 1st respondent failed to consider all such contentions of the petitioner herein.

- The petitioner submits that the possessory agreement of sale is genuine one. It is not an antedated document, as wrongly held by 1st respondent. The son of the vendor under the agreement of sale clearly deposed that his father sold the property under a possessor agreement of sale to the petitioner and in support of possession ever since the date of possessory agreement was took place in the year 1965 this petitioner filed adangal extracts. So, the finding of 1st respondent is absolutely baseless.

- The petitioner submits that the possession of a person in pursuance of possessory agreement of sale is protected. The Hon’ble High Court of Andhra Pradesh in the decision reported in 1982 AP Page 1 clearly held that a possessory agreement holder is entitled for protection and the same comes within the definition of a transfer and hence, it is a protected transaction. So, in this case there is no illegality.

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- The Revision Petitioner finally submits that the respondents 3 and 4 themselves having admitted before the primary authority that they had nothing to do with the land, cannot turn round and say that they were misled before the primary authority.

3. The Government have admitted the said Revision Petition and in the reference 2nd read above has requested the Agent to Government, Eluru, West Godavari District to furnish the parawise remarks and connected records on the Revision Petition.

4. In the reference 3rd read above, the Agent to Government/ District Collector, West Godavari District, Eluru has furnished parawise remarks along with the connected records.

5. Government after careful examination of the Revision Petition in pursuance of the record received from the Agent to Government & District Collector, West Godavari & written arguments received from the petitioner and after hearing the arguments both the sides it is observed that this Revision is filed under Sec.6 of APSALT Regulation 1 of 59 as amended by 1 of 70. Feeling aggrieved by Orders of Agent to Government and District Collector, West Godavari, in SRA 1/2009 in relation to the land, in survey No. 267/2 measuring an extent of Acres 8.18 cents and 96 cents in surapuvarigudem village of Buttaigudem Mandal. Where from the petitioner (non-tribe) was ordered to be ejected. Originally in SR. 64/2002, the application filed by first respondent herein in respect of the above land, seeking ejectment of petitioner herein was dismissed by Special Deputy Collector, Tribal Welfare.

6. While so, it is important to note that the Order of ejectment passed by the learned District Collector, West Godavari was implemented as per the written arguments of 1st respondent i.e. Agent to Government, West Godavari and consequently the petitioner i.e. Sri Kuchipudi Dorabbai was ejected on 14/10/2010 under panchanama vide Order of Tahsildhar, Buttaigudem, dt: 7/10/2010 in Rc No. 483/2010 (A) and the possession of the schedule land was delivered to Dadi Sreenu, the 1st respondent herein, who has been enjoying the said land till this day.

7. On the other hand, the revision petitioner, i.e. Sri Kuchipudi Dorabbai contends that he along with Doddi Basavalingam and others got settlements patta under sec 7/r.w 9 of A.P. Schedule Area Rituwari Settlement regulation by orders of Director of Settlement, Hyderabad, in A No. 22/95 (G2) dt: 31-01-1997, in respect of land in Survey. No 267/2 measuring extent of H. 3.31 A, survey. No. 276/3 H 2.10 A, Survey No. 264/1 measuring extent of H.0.39 A.

8. No doubt a lot of exercise was made by the learned Agent to Government, West Godavari district, to interfere with the Order passed by the learned Special Deputy Collector. But, on meticulous reading of the Orders of learned Agent to Government vis-à-vis the Order of Special Deputy Collector, it can be safely concluded that the learned Agent to Government ignored the Order passed in favour of Kuchipudi Dorabbai and others by the learned Director of settlements in appeal No. 25/95 (G2) dated 31/01/1997 where under Rituwari settlement patta was granted to them for an extent of H.3.31 A in survey No. 267/2 and another extent of H.0.39 A in Survey No. 264/1. The said land is if converted into acres would come to Acres 8.27/1/2 cents and AC. 97/1/2 cents. The Survey Numbers and subdivisions are tallied and the documents considered by the DOS are also tallied. Therefore, it can be safely held that Kuchipudi Dorabaai and others were granted settlement pattas by learned DOS, and the said Order became final as no appeal was preferred to commissioner, Survey and Settlements, under sec 9 A.P. Rituwari Settlement Regulation, but the same was not properly considered by learned Agent to Government. On the other hand, she says that the said land is different from the schedule lands in the above case.

9. Hence, it is undoubtedly an error apparent on the face of record which definitely adds strength to change the result of the case.

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10. Apart from the same the revision petitioner also claims that by the impugned order, the principles of natural justice were violated as several documents produced and marked on behalf of the revision petitioner herein, which were considered and appreciated by the learned Special Deputy Collector, while dismissing the petition were ignored by the learned Agent to Government. Further the registered sale deed dated 5-8-1957 registered by document No. 1396/1957 also reveals that Daddi Sommayya is of Telaga community which is OC community. The Government after going through the Order of DOS also finds that the other patadars namely Doddi Basavalingam and others were not given any notices either the learned Special Deputy Collector or Agent to Government.

11. It is the basic principle of law that a person cannot be evicted except by due process of law. (2004) 1 Supreme Court Cases 769 full bench at page 776. Further, the Hon'ble High Court & Supreme Court had held several times, the statutory authorities who are determining the rights of parties in immovable property shall act judiciously and principles of natural justice must be followed scrupulously.

12. Despite of a lot of exercise by the Agent to Government in passing the impugned Order, the learned Agent to Government missed the following crucial aspects.

1. Non- consideration of the Order of DOS
2. Non-examination of the recitals of sale deeds
3. Non- Issuance of the notice to the persons interested in the property which is mandatory

13. Therefore, the Government is of considered view that the impugned order is not sustainable under law, and hence it is liable to be set aside and it is accordingly set aside.

14. However, there requires fair and affective adjudication of matter for determination of rights of rival parties in the above case.

15. Therefore, the Government is of considered view that the matter has to be remanded to primary authority i.e., Special Deputy Collector, Tribal Welfare and consequently he is directed to hold enquiry a fresh giving opportunity to all the persons interested and pass orders according to law and the said exercise shall be completed within 3 months from the date of receipt of this order. Meanwhile status quo with regard to possession as on today shall be maintained.

16. The original records bearing SRA. No.1/2009 and SR.No.128/85, 64/2002 received from the Agent to Government/ District Collector, West Godavari District, Eluru through reference 3rd read above, is returned herewith and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.P. SISODIA
PRINCIPAL SECRETARY to GOVERNMENT

To:
The District Collector & Agent to Government, West Godavari District, Eluru. (w.e. original record)
The Special Deputy Collector(TW), Kotaramachandrapuram, West Godavari District (w.e.)
The Special Deputy Thahsildar, Kotaramachandrapuram(M), West Godavari District(w.e.)

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Copy to:
Sri V. Venugopal Rao, Advocate, Flat No.1, B.No.17, MIG-II,
Near Saibaba Temple, Bagh Lingampally, Hyderabad.
Sri S.Veerayya & Koney Satyananda Rao, Advocate, H.No.8-13/2, 4th Road, Mythrinagar, Dilsuknagar, Hyderabad.
Sri. Kuchipudi Dorabbai S/o. Ganga Raju,
R/o. Surapuvarigudem(V), Buttaigudem (M), West Godavari District.
Sri Dadi Srinu, S/o. Laxmayya, Surapuvarigudem Villagae, Buttaigudem(M), West Godavari District.
Sri Tama Seetayya, S/o. Kannayya, R/o. Chenchugudem (V), Buttaigudem(M), West Godavari District.
The P.S to Hon'ble Minister (SWE & TWE) for information.
The P.S to Principal Secretary to Government (TW).
SF/SC.

//FORWARDED::BY ORDER//

SECTION OFFICER